

Intellectual Property
Fall 2024
Final Exam

This assignment consists of **two questions** and **ten pages**. It is due by **11:59 PM on Wednesday, December 18**.

Submit your answer by uploading a PDF to the Final Exam assignment on Canvas. Your answer has a limit of **1,500 words per question**, which will be strictly enforced. Because the exam is blind-graded, keep your **name and other identifying information** out of the PDF you submit. Please write the **word count** of each answer at the end of the PDF.

This is an **open-book** examination. You should not need to consult anything beyond the casebook, the slides, and your notes, but you can if you wish. You are free to discuss the general legal principles we have covered with anyone, including each other.

You are free to post general questions about the material covered in the course or clarifying questions about the *facts* (not the law) in the problems on the exam in the designated discussion area on Canvas. I will answer all questions posted there before 11:59 PM on Friday December 13.

Aside from that, **you may not discuss the question** with anyone else until after I have returned your grades. Your work on this examination is subject to the Cornell Code of Academic Integrity, the Law School Code of Academic Integrity, and the Campus Code of Conduct.

Please make your answer as **specific** to the facts of the question as you can. Generic statements or suggestions, such as "Make sure that all employees follow proper security practices," will receive few or no points. Your answer should assume that I am already familiar with the facts of the problem and relevant law, and dive directly into your analysis. Use **simple citations** (e.g. "*see KSR*") where appropriate. I include **spelling, grammar, clarity, and organization** in my grading. I appreciate the use of basic headings to organize your answer, but they're not required. If you find the question **ambiguous** or need to **assume additional facts**, state your assumptions and explain how they affect your answer. No reasonable resolution of an ambiguity will be penalized.

Assume for purposes of the examination that present-day law has been fully in effect at all relevant times. Unless otherwise noted, all names are fictitious. Please disregard any resemblance to actual persons, places, or institutions, unless they are specifically incorporated into a question.

Policy on the use of Generative AI Systems

You are **allowed** to use **generative-AI** tools in researching and writing your answer, subject to four conditions:

1. The tools must be **entirely automated**. You may not circumvent the rule against discussing the question with anyone by using a hybrid human/computer system, asking someone to help you with your prompts, or doing anything else that puts a human in the loop.
2. The tools you use must be **freely and publicly available**. You may not use any tool for which you paid a usage or subscription fee (or someone else paid it on your behalf), or use any tool that has not been released to the general public.
3. You must **disclose** which tools you used and give a brief description of how you used them in an appendix to your answer. (The appendix does not count against the word limit.) For example, "I input the question to Claude to generate ideas. I used ChatGPT to help clean up the answer."
4. Any use of generative-AI tools is entirely **at your own risk**. You are fully responsible for anything you submit; I will not accept "the computer did it" as an excuse for mistakes of fact or law. Large language models are well known to confidently make blatantly false assertions, cite non-existent cases, and inaccurately summarize legal doctrines. In my experience, they can also be bad writers; their outputs are often bland and wordy. **YOU HAVE BEEN WARNED.**

Good luck, and thank you for a wonderful semester!

The Dude Abides



Jeffrey Lebowski, enjoying one of his favorite drinks

Your client is Jeffrey “The Dude” Lebowski, an inventor and professional bowler. He was relaxing at home one day recently when he was interrupted by a loud knock on his door. It was a process server, who shouted “Where’s the money, Lebowski?” and presented him with the complaint and summons for a copyright infringement lawsuit. The suit, filed by Treehorn Productions, alleged that Lebowski had downloaded the movie *Logjammin’* from a file-sharing site without the permission of the copyright owner. The Dude was puzzled, because he had never heard of the movie. He read the complaint and realized that the named defendant was named *Geoffrey* Lebowski, not *Jeffrey* Lebowski.

The Dude discussed the situation with his bowling friends Walter Sobchak and Donny Kerabatsos. Walter suggested that he should go talk to the other Lebowski to get the issue sorted out, so The Dude drove out to Geoffrey Lebowski’s house. It turned out to be a substantial mansion, and The Dude learned, as his host showed him around, that Geoffrey Lebowski-

ki was the CEO of Little Lebowski Industries, a multi-billion-dollar home furnishings company. Geoffrey was initially friendly, but became hostile when The Dude presented him with the complaint and summons, incorrectly believing that The Dude was attempting to serve him with the lawsuit. Geoffrey said that he had downloaded the movie because the versions available on streaming didn't have closed captions, and his hearing disability meant that he was reliant on captions to understand what was going on. Then he yelled at The Dude to leave. Annoyed, The Dude saw an attractive rug in the hallway on his way out. He rolled it up and took it with him, thinking that it would really tie his living room together.

He returned home to find a voicemail message from Enid Knutson, an actress. She said that she had starred in *Logjammin'*, and also composed the music used in the movie, and as a result, she was the real copyright owner.

The Dude returned to the bowling alley for a game with his friends. He mentioned that he had been working on a new bowling-ball design featuring a core attached with springs to absorb vibrations and allow it to roll more smoothly. Donny said that it would violate most bowling leagues' rules, which prohibit the use of mechanical parts. Walter suggested that maybe it should use a gel instead, and The Dude said he would experiment to see if there were any suitable gels. The next day in his workshop, he started making prototypes using widely available industrial gels, in order of increasing stiffness. The first four didn't work, but the fifth, which used a gel known as 376-PCE, was a success.

The Dude went home and poured himself a drink, but he was interrupted by another knock on the door. This time it was a process server serving him with a copyright-infringement lawsuit from Maude Moore, an artist. The complaint alleged that the rug was an exact copy of one of Moore's paintings, and that it had been created and manufactured by, of which Geoffrey Lebowski was the CEO. The Dude objected that, once again, they had the wrong Lebowski, but the server pointed to the paragraphs in the complaint alleging that by taking the rug home and displaying it in his living room, Jeffrey Lebowski had violated Moore's exclusive rights.

Now seriously annoyed, The Dude went to visit Moore to try to explain the situation. She showed The Dude her studio, where she creates her paintings by dripping paint on a canvas while being suspended in the air by her assistants. She attempts to hold as still as possible, and her assistants' choices about when and how hard to pull on the ropes supporting her cause the paint to splatter in different ways. Impressed, The Dude explained that he considered himself something of an artist as well, and described a recipe for a [White Russian](#) variant he had created last year and had been selling as a side hustle under the brand name "Big Lebowski" in premixed quart cartons. His version used oat milk instead of cream, along with several dashes of chocolate bitters. Moore was friendly, but insisted that she considered it a matter of artistic integrity to enforce her copyrights and refused to drop the suit.

While driving home, The Dude turned on his car radio. The song on the radio sounded familiar, and he nearly got into an accident trying to figure out what it was. The announcer said that it was "Nagelbett" by the band Autobahn. After a bit of thinking, The Dude realized that the melody and chords were identical to "Peaceful Easy Feeling," a song written by Jack Tempchin and originally performed by The Eagles on their 1972 debut album. He also realized that "Nagelbett" included a six-second sample of a guitar riff from Credence Clearwater Revival's 1970 version of "Lookin' Out My Back Door," a song written by John Fogerty, CCR's lead guitarist and singer. Out of curiosity, he looked up "Nagelbett" in the Copyright Office's records, and saw that the musical-work registration was in the name of Uli Kunkel and the sound-recording registration was to Kunkel and Franz-Dieter Hungus, the two members of Autobahn.

When someone knocked on the door, he ignored it, but then they slid an envelope under the door. It was another lawsuit, this one filed by Geoffrey Lebowski alleging that The Dude was infringing his right of publicity and infringing on the LITTLE LEBOWSKI INDUSTRIES trademark by competing in professional bowling leagues using the name "Jeffrey Lebowski" and by selling "Big Lebowski" cocktails. In addition, it contained a Lanham Act § 43(a)(1)(B) false-advertising claim that The Dude had held himself out as "The World's Best Bowling Instructor," a claim

that was false. "Yeah, well, you know, that's just, like, your opinion, man," said The Dude, as he picked up the phone to call you for your legal advice.

Advise The Dude on the IP issues raised by his recent adventures. You should consider (a) any potentially valuable IP rights that The Dude may have, (b) any IP risks The Dude faces in the three lawsuits with which he has been served, and (c) any significant IP claims that other people mentioned in his story might have against each other.

This is Christmas



One of Christmas Town's ornate window displays

Your client is John Skellington, the CEO of Halloween Town Inc. (HTI). For the past thirty-six years, HTI has operated a chain of as many as 600 seasonal stores, Halloween Town, which sell costumes, giant 12-foot plastic skeletons, fog machines, and many other Halloween-themed items. HTI's business model has been to lease vacant storefronts in outdoor malls and high-traffic urban areas, open in early September, and then close in early November after Halloween has passed. Like its better-known competitor, [Spirit Halloween](#), Halloween Town has become the subject of numerous online memes making fun of its ability to pop up anywhere. It is also famous for its theme song, "This is Halloween," which plays in its

advertising, in its stores, and (in a xylophone version) in many of the accessories it sells. All of these versions were created in 2006 by Jewel Elfman, a musician and composer who assigned all of her rights in the music and recording to HTI.

This year, HTI expanded to serve the Christmas market as well. After Halloween, when most Halloween Town locations went dark, most of them spent the next week intensively removing all of their Halloween merchandise and decor and replacing it with Christmas-themed merchandise and decor, and then reopened as Christmas Town, with plans to remain open until early January. Skellington has become concerned about the IP implications of a number of issues related to the Christmas Town launch, and has sought your advice.

HTI has held a registered trademark on HALLOWEEN TOWN since 1992, and it received incontestable status in 1999. It filed an intent-to-use application for CHRISTMAS TOWN on April 3, 2024.

Sally O'Hara, HTI's director of real-estate operations, was working from home and bored on a long conference call in June 2024. She put her microphone on mute and started playing around with the "This is Halloween" theme on the piano in her home. By the end of the call, she had worked out a cheerful Christmas-y arrangement of the song. She gave Skellington a demo tape, recorded at home using piano and sleigh bells. She said that if Skellington was interested, she was willing to discuss terms for licensing the song for use at Christmas Town stores and that she could write out the instrumental parts for recording by a full professional orchestra. But Skellington forgot that part of the conversation, and instead the demo tape has been playing at Christmas Town stores since they switched over after this Halloween.

Another chain of Christmas-themed stores, the Christmas Village Company (CVC) has threatened legal action. Christmas Village is a year-round store with about 200 locations throughout the United States. CVC has held a registered trademark on CHRISTMAS VILLAGE since 2007. It sent HTI a cease-and-desist letter on August 12, alleging that the CHRISTMAS TOWN mark is confusingly similar to CHRISTMAS VILLAGE. Simultaneously, it filed an opposition with the USPTO objecting to HTI's intent-to-use application. After the first Christmas Town stores

opened up, CVC followed up with a second cease-and-desist letter, repeating the arguments from the first one and adding that the decor of Christmas Town stores violates CVC's IP rights in several respects:

- Christmas Town stores are decorated in a red-green-and-white color scheme, as are Christmas Village stores.
- By the main entryway in each Christmas Town store, there is an eight-foot artificial Christmas tree with a six-foot [nutcracker](#) statute on each side of it. Each Christmas Village store also has an eight-foot artificial Christmas tree with a six-foot nutcracker statute on each side of it, although the specific trees and nutcracker statute designs are different.
- Christmas Town and Christmas Village sell many of the same products. These include a [wreath](#) that is visually identical to one sold by Oogie-Boogie Home Goods, on which Oogie-Boogie holds U.S. design patent No. D1,233,043. They also include [menorahs](#) and [kinaras](#) ("Christmas" celebrations in the United States have come to include a number of non-Christian seasonal holidays) that appear to come from a line sold exclusively through Christmas Village. You asked Skellington for more details, and after some investigation he reported that the wreaths were purchased from the factory, Zero Toy Supply, that also manufactures the Oogie-Boogie wreaths. They were production overruns beyond the quantity that Oogie-Boogie ordered, and Zero decided to sell them rather than scrap them. The menorahs and kinaras look like Christmas Village stock because they are: they were unsold inventory from the 2023 holiday season, which CVC sold to a liquidator, from whom HTI bought them at a public auction.
- CVC also alleges that Christmas Town sells [Christmas stockings](#) that are infested with insects, and that Christmas Town is engaged in false advertising by promoting itself as a safe and family-friendly store. Skellington is outraged at this accusation. He is 95% certain that there are no insects in any of Christmas Town's stockings. "If anything is false advertising here, it's that letter!" he shouted.

You have also learned that one of HTI's vice presidents, Tim Finkelstein, encountered the head of CVC's strategic planning team, Christopher Kringle, at a bar this spring. Finkelstein bought Kringle drink after drink

while they discussed the seasonal-gift business. Once Kringle was too drunk to be fully aware of the situation, Finkelstein pressed him for information about CVC's operations, including budget details, predictions about this year's Christmas fashion trends, and claims about the wholesale prices that CVC pays for the merchandise it buys. Finkelstein then used this information to draw up HTI's own launch plans for Christmas Town.

Advise Skellington on the IP issues raised by HTI's launch of Christmas Town. Describe any IP risks that HTI faces, and, where appropriate, any steps that HTI should take to mitigate those risks.